

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

PATRICIA A. BROUGHTON,  
Appellant,

v.

DEPARTMENT OF HEALTH AND HUMAN  
SERVICES,  
Agency.

DOCKET NUMBER  
DC07528610513

DATE: APR 15 1987

William L. Bransford, Esquire, Neill, Mullenholz, Shaw  
& Seeger, for the appellant.

Daniel J. Edelman, Esquire, Washington, D.C., for the  
agency.

BEFORE

Daniel R. Levinson, Chairman  
Maria L. Johnson, Vice Chairman  
Dennis M. Devaney, Member

OPINION AND ORDER

The appellant has petitioned for review of an initial decision in which an administrative judge of the Board's Washington Regional Office sustained appellant's removal. For the reasons stated below, the Board DENIES the petition. See 51 Fed. Reg. 25,158 (1986) (to be codified at 5 C.F.R. §

1201.115).<sup>\*</sup> The Board REOPENS the case on its own motion, however, 5 C.F.R. § 1201.117, and AFFIRMS the initial decision as MODIFIED.

#### BACKGROUND

The appellant was employed as an Administrative Officer, GS-12, in the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), National Institute of Mental Health (NIMH), until November, 1985, at which time she was transferred to the position of Program Coordinator, GS-12. Appellant was removed for the following three charges of misconduct occurring between January and October, 1985: (1) failing to obtain authorization for 573.25 hours of overtime; (2) ignoring the applicable time and attendance (T&A) regulations and abuse of supervisory authority; and (3) reporting more hours of overtime than were actually worked.

In an initial decision issued December 5, 1986, the administrative judge sustained the agency's action, based on her finding that the agency proved its charges by preponderant evidence. With respect to appellant's allegation that she was discriminated against on the basis of race and sex, the administrative judge found that appellant had failed to show that the agency's legitimate

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<sup>\*</sup> On July 10, 1986, the Board republished its entire rules of practice and procedure in the Federal Register. For ease of reference, citations will be to the Board's regulations at 5 C.F.R. Part 1201. However, parties should refer to 51 Fed. Reg. 25,146-72 (1986) for the text of all references to this part.

nondiscriminatory reason for the removal was pretextual. Finally, the administrative judge concluded that the sustained charges warranted the agency-selected penalty of removal.

In her petition for review, appellant asserts the following: (1) The agency failed to prove charges two and three by preponderant evidence; (2) the administrative judge erred in not sustaining appellant's claims of discrimination; and (3) the penalty of removal was too severe.

#### ANALYSIS

Appellant's assertions concerning charges two and three constitute mere reargument of issues already raised and properly resolved by the administrative judge below. *Weaver v. Department of the Navy*, 2 M.S.P.R. 129, 133-34 (1980), *aff'd*, 669 F.2d 613 (9th Cir. 1982) (mere disagreement with the administrative judge's findings, credibility determinations, and conclusions does not warrant full review of the record by the Board). Appellant's petition contains specific citations to the record in support of her contentions that the administrative judge erred in (1) rejecting her claim that her subordinate acted on her own in disobeying NIMH time and attendance regulations; and (2) finding that she intended to falsify the time and attendance records by claiming overtime for hours which she had not worked. However, the petition fails to identify any internal inconsistency or inherent improbability in the fact

findings of the administrative judge or other basis sufficient to overcome the special deference which reviewing bodies must necessarily accord the factual determinations of the original trier of fact. See *Jackson v. Veterans Administration*, 768 F.2d 1325 (Fed. Cir. 1985); *Connolly v. Department of Justice*, 766 F.2d 507 (Fed. Cir. 1985). The initial decision reflects that the administrative judge considered the evidence as a whole, drew appropriate inferences, and made reasoned conclusions on issues of credibility. Under these circumstances, the Board finds no reason to disturb those conclusions.

Appellant's allegation of discrimination on the bases of race and sex rested on her claim that she was treated differently from the timekeeper and her supervisor, both of whom also acted in derogation of NIMH time and attendance regulations. The administrative judge found that appellant did not offer sufficient evidence to establish a prima facie case of discrimination. She stated that "none of the evidence offered equates the actions of Mr. Pittman and Ms. Sweeney with those of appellant" because, inter alia, neither individual received compensation for time that was not worked. We concur in this finding. See *Weaver*, 2 M.S.P.R. at 133.

With respect to appellant's final contention, that the penalty of removal is too severe, and that she was disparately treated, the administrative judge evaluated the penalty in light of *Douglas v. Veterans Administration*, 5

M.S.P.R. 280 (1981), and properly concluded that the penalty of removal was within the bounds of reasonableness in light of the sustained charges and did not constitute disparate treatment.

#### DECISION

The initial decision is hereby AFFIRMED as MODIFIED by this Opinion and Order. This is the final order of the Merit Systems Protection Board in this appeal. 5 C.F.R. § 1201.113(c).

#### NOTICE TO APPELLANT

You have one of several alternatives to choose from if you want further review of this decision.

#### Discrimination Claims

You may petition the Equal Employment Opportunity Commission (EEOC) to consider the Board's decision on your discrimination claims, and still preserve any right you may have to judicial consideration of your discrimination claims or your other claims. 5 U.S.C. § 7702(b)(1). The address of the EEOC is Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 5203 Leesburg Pike, Suite 900, Falls Church, Virginia 22041. The law is unsettled regarding the time limit for filing where a party is represented. Therefore, you must file a petition with the EEOC no later than thirty days after receipt of this order by you or your representative, whichever occurs first. 5 U.S.C. § 7702(b)(1).

If you do not petition the EEOC for consideration of the Board's decision on your discrimination claims, or if you do petition the EEOC and it affirms the Board's decision in your appeal, you may choose to file a civil action on both your discrimination claims and your other claims in an appropriate United States district court. 5 U.S.C. § 7703(b)(2). The law is unsettled regarding the time limit for filing where a party is represented. Therefore, if you elect to file a civil action without first petitioning the EEOC, you must file a petition with the district court no later than thirty days after receipt of this order by you or your representative, whichever occurs first. 5 U.S.C. § 7703(b)(2). If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a handicapping condition, you may be entitled to representation by a court-appointed lawyer and to request waiver of any requirement of prepayment of fees, costs, or other security. 42 U.S.C. § 2000e5(f); 29 U.S.C. § 794a.

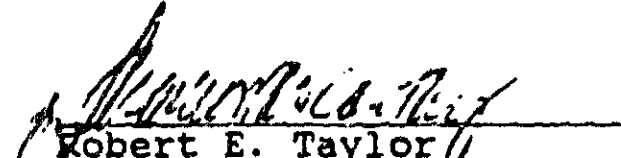
#### Other Claims

If you choose not to seek review of the Board's decision on your discrimination claims, you may petition the United States Court of Appeals for the Federal Circuit to review the decision on issues other than prohibited discrimination, if the court has jurisdiction. 5 U.S.C. § 7703(b)(1). The address of the court is 717 Madison Place, N.W., Washington, D.C. 20439. The law is unsettled regarding the time limit for filing where a party is

represented. Therefore, you must file a petition with the court no later than thirty days after receipt of this order by you or your representative, whichever occurs first. 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

Washington, D.C.

  
Robert E. Taylor  
Clerk of the Board